

Honorable John C. Coughenour

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHONG and MARILYN YIM, KELLY)	Civil Action No. 2:18-cv-00736-JCC
LYLES, EILEEN, LLC, and RENTAL)	
HOUSING ASSOCIATION OF)	
WASHINGTON,)	NOTICE OF SUPPLEMENTAL
)	AUTHORITY
Plaintiffs,)	
v.)	
)	
THE CITY OF SEATTLE, a Washington)	
Municipal corporation,)	
)	
Defendant.)	

Plaintiffs wish to notify the Court of recent Ninth Circuit precedent relevant to this dispute. In *Pacific Coast Horseshoeing School, Inc. v. Kirchmeyer*, 961 F.3d 1062 (9th Cir. 2020), the Ninth Circuit addressed whether certain provisions of California’s Private Postsecondary Education Act regulated conduct or speech for purposes of a First Amendment challenge.

In *Pacific Coast Horseshoeing School*, Esteban Narez sought to enroll in a program at a privately run horseshoeing school in order to become a farrier. *Id.* at 1066. Since he didn’t have a high school degree, however, the Postsecondary Education Act required that he submit to a state-administered exam before he could enroll. *Id.* Mr. Narez and the school objected to the exam requirement and challenged it on First Amendment grounds.

1 The lower court granted a motion to dismiss on the grounds that the law only regulated
2 conduct—enrolling at a school. The Court disagreed, holding that the law “regulates what kind of
3 educational programs different institutions can offer to different students. Such a regulation
4 squarely implicates the First Amendment.” *Id.* at 1069.

5 The panel opinion described in some depth how to address the distinction between conduct
6 and speech. The panel said that “[o]ne way for us to tell is to ask whether the [law] differentiates
7 between speech or speakers,” and whether it “target[s] speech based on its communicative
8 content.” *Id.* at 1070–71 (quoting *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015)).
9 The California law, the Court held, regulated speech because it favored “particular kinds of speech
10 and particular speakers through an extensive set of exemptions” and therefore “necessarily
11 *disfavors* all other speech and speakers.” *Pacific Coast Horseshoeing School*, 961 F.3d at 1072
12 (emphasis in original). In addition, the law implicated free speech by regulating based on “who
13 the listener is and the message the speaker seeks to convey.” *Id.* at 1073.

14 The Court also reaffirmed the right to receive information. Narez had suffered an “actual
15 injury under the First Amendment” because the Act restricted his “right to receive information and
16 ideas” by placing barriers to enrolling in a private post-secondary school. *Id.* at 1069 (cleaned up).

17 Here, the City of Seattle has defended the Fair Chance Housing Ordinance, which bans
18 landlord inquiries about criminal history, on the grounds that the ban regulates conduct, not speech.
19 *See City’s Opp. and Cross Motion for Summary Judgment* (Oct. 26, 2018), Dkt. #23 at 10 (“The
20 Ordinance regulates commercial conduct.”); *City’s Reply in Support of Its Cross Motion for*
21 *Summary Judgment* (Jan. 11, 2019), Dkt. #50 at 2 (“Subsection 2 is part of a commercial conduct
22 regulation imposing incidental burdens on speech with minimal expressive elements.”).

23 Plaintiffs, moreover, have relied in part on the right to receive information in arguing that
24 the ban on inquiries about criminal history burden protected First Amendment interests. *See*
25 *Plaintiff’s Motion for Summary Judgment*, Dkt. #23 at 6–8 (“Seattle’s gag rule implicates the First
26 Amendment by restricting access to information that Seattle does not control—and which is
27 otherwise publicly available—if the inquirer plans to use that information for a purpose that the

1 City disapproves.”); Plaintiffs’ Opp. to City’s Cross-Motion for Summary Judgment and Reply in
2 Support of Motion for Summary Judgment, Dkt. #48 at 2–4 (“Here, the gag rule directly restrains
3 the right to receive information, a recognized First Amendment right.”).

4 DATED: March 30, 2021.

5
6 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF, system which will send notification to all counsel of record.

s/ ETHAN W. BLEVINS

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